

FEB 27 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

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HAASHIM PIERSON,	)	Civil Action No. 7:06cv00366
Petitioner,	)	
	)	<u>MEMORANDUM OPINION</u>
v.	)	<u>AND ORDER</u>
	)	
UNITED STATES OF AMERICA,	)	By: Hon. Michael F. Urbanski
Respondent.	)	United States Magistrate Judge

Petitioner, Haashim Pierson, filed this 28 U.S.C. § 2255 motion challenging the validity of his plea and his sentence of 240 months incarceration, claiming that his guilty plea was not knowing and voluntary and that counsel provided ineffective assistance. Respondent filed a motion to dismiss arguing that in his plea agreement, Pierson waived his right to collaterally attack his conviction and sentence; however, respondent's motion did not address the merits of Pierson's claim that counsel was ineffective in failing to file an appeal after being requested to do so, a claim outside the scope of his waiver.

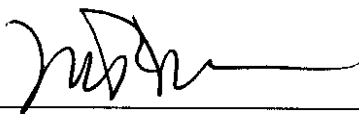
On January 17, 2007, this court ordered an evidentiary hearing in this matter on this issue of whether Pierson requested his attorney to file an appeal, and on January 19, 2007 set the hearing for February 13, 2007. By order entered January 25, 2007, all dispositive matters in this action were referred to the undersigned to submit proposed findings of fact and a recommended disposition. On January 30, 2007, however, the court was informed that Pierson had been transferred to another federal correctional institution, FCI Fairton, in New Jersey. Currently, he is in transit for an estimated 45 days. By Order entered February 12, 2007, the evidentiary hearing was postponed until further court order.

Further review of the file indicates that Pierson's former counsel is now deceased and therefore unable to present evidence at an evidentiary hearing, perhaps rendering such a hearing

moot. Given the circumstances of this case and the position of the United States taken in Clark v. United States of America, Civil Case No. 7:06cv00210 and Markle v. United States of America, Civil Case No. 7:06cv00438, respondent is hereby **ORDERED** to respond within ten (10) days of the entry of this order to Pierson's claim that counsel was ineffective in failing to file an appeal after being requested to do so.

The Clerk of the Court is directed to send a certified copy of this Order and accompanying Memorandum Opinion to the petitioner.

ENTER: This 27<sup>th</sup> day of February, 2007.

  
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United States Magistrate Judge